

1980 December 11

[A. LOIZOU, DEMETRIADES AND SAVVIDES, JJ.]

IOANNIS PANAYIOTIS MICHAELIDES,
Appellant-Defendant,

v.

MARIA SAVVA TTAPOURA,
Respondent-Plaintiff.

(Civil Appeal No. 5600).

Immovable property—Error or omission in the land register—Rectification—Disputed portion excluded from respondent’s registration, when respondent acquired property through transfer from her mother—And included in appellant’s registration, at time of said transfer, through a mistake of the L.R.O.—Respondent and her predecessor in title always in possession of disputed portion —Whether respondent could assert her ownership over it by means of Court proceedings in view of the provisions of section 61 of the Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224 and in view of the fact that her claim was not based on a title or a prescriptive right—See Hassidoff v. Santi & Others (1970) 1 C.L.R. 220 at p. 236. 5 10

Immovable property—Bona fide purchaser for value without notice—Registered sale—Rights of ownership—Onus on purchaser to take reasonable steps to ascertain rights and interest of his vendor —Error in vendor’s registration—Had purchaser made reasonable inquiries he could ascertain such error. 15

Immovable Property—“Entitled to be registered”—Meaning of the term.

The mother of respondent–plaintiff was the owner, by virtue of registration No. 1754, dated 11th December, 1916, of a field at Spitali village. This registration covered plots 413/1/1, 413/1/2, 413/2. In 1945 the mother sought to transfer in respondent’s name the property covered by the above registration by a declaration of gift after fully complying with the formalities required by the law in force at the time. The title issued in respondent’s name, however, covered only two of the aforesaid plots, namely 413/1/1 and 413/1/2, but it did not cover plot 413/2, though nothing was stated in the relevant declaration of transfer to exclude 20 25

such plot therefrom. It was later found out that the above plot 413/2 ("the disputed plot") was inserted in the registration covering the adjacent plot 342 owned by the appellant-defendant since 1971. This was done apparently through an error of the District Lands Office because neither the registered owner of the disputed plot has ever given her consent for the taking away of part of her property nor has the predecessor in title of appellant's plot 342 ever asked to include in his registration the disputed plot.

In proceedings by the respondent in order to assert her ownership over the disputed plot the trial Court found that such plot has always been cultivated by respondent and her predecessor in title; and that the parcelling of the disputed portion from the property of the respondent's mother was done without the knowledge or consent of the true owner who, as well as her successor in title, laboured under the belief that nothing had happened to upset her from the ownership of the land.

Upon appeal by the defendant against the judgment of the Court below, whereby it was declared that the respondent was the owner of the disputed plot and there was made an order for the rectification of the records of the District lands Office, counsel for the appellant contended that:

(a) That the respondent had no locus standi as she could not base her claim on a title nor could she allege prescriptive or other rights of property over the disputed plot and

(b) That the appellant was a bona fide purchaser for value.

Held, (1) that for all intents and purposes the declaration of transfer by respondent's mother was, according to the law, duly executed and the respondent has been the person entitled to be registered as owner of the disputed portion by virtue of such declaration and in that capacity she has a locus standi to institute these proceedings; that the term "entitled to be registered" is a term not confined only to cases of a claim by virtue of a prescriptive right but it includes the case where all the formalities for an effective transfer under the law have been complied with and there only remains the recording of the registration by the appropriate Lands Clerk to complete it; that, therefore, the respondent could in law, proceed, as she did, for the purpose of rectification of an error or omission

in the land Register in spite of the provisions of section 61 of The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as by its very nature this was not a straightforward case of an error or omission appearing in the Land Register or in any book in the Lands Register Office or in a certificate of registration, as provided in the aforesaid section, but a more complicated matter where in order to trace the alleged error, an investigation had to be carried out by the Director concerning legal rights in land necessitating the calling of evidence and also determination of the question whether the appellant was a bona fide purchaser for value or not and whether he had in the circumstances made reasonable inquiries in order to find out whether the vendor in addition to being the holder of title-deed was also the undisputed owner in possession of the land to be sold (*Hassidoff v. Santi and Others* (1970) 1 C.L.R. 226 at p. 236 followed; *Papageorghiou v. Komodromou* (1963) 2 C.L.R. 221 distinguished); accordingly contention (a) must fail.

(2) That the onus was on the appellant to satisfy the Court that he took reasonable steps to ascertain the rights and interest of his vendor in the property which he purported to purchase; that had he in the present case made reasonable inquiries it would have come to his knowledge that the disputed piece of land was all along in the possession of the respondent and her mother and that upon further inquiry he would have ascertained that the respondent was entitled to be registered thereof; that he would have also ascertained the error in the registration of his vendor; that, therefore, he cannot protect himself behind the principle that he had no notice of the situation; accordingly contention (b) must, also, fail. (See, also, *Arnaout v. Zinouri*, 19 C.L.R. 249 at p. 255).

Appeal dismissed.

Cases referred to:

Papageorghiou v. Komodromou (1963) 2 C.L.R. 221;
Arnaout v. Zinouri, 19 C.L.R. 249 at p. 255;
Hassidoff v. Santi and Others (1970) 1 C.L.R. 220 at p. 236.

Appeal.

Appeal by defendant against the judgment of the District Court of Limassol (Hadjitsangaris, S.D.J.) dated the 5th June, 1976 (Action No. 3756/73) whereby it was declared that the plaintiff is the owner of the disputed land and it was ordered

that the records of the District Lands Office be rectified accordingly.

P. Pavlou with *S. Papakyriacou*, for the appellant.

Y. Potamitis, for the respondent.

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Cur. adv. vult.

A. LOIZOU J. read the following judgment of the Court. This is an appeal from the judgment of the District Court of Limassol by which there was made (a) a declaration "That the plaintiff"—(respondent in this appeal)—"is the owner of the disputed land plot 413/2" and (b) an order that "the records of the District Lands Office be rectified accordingly" with costs against the defendant.

The facts of the case as they appear in the judgment of the trial Court are as follows:

15 The predecessor in title of the respondent was her mother Efrosini Charalambous, who was the owner by virtue of registration No. 1754, dated 11th December, 1916, of a field at locality "Kokkinoyi" of the village Spitali, of an extent of ten donums and two evleks with a hundred carob-trees standing thereon
20 for which there was a separate registration under No. 1755, of the same date.

The boundaries of this field, as given in the said registration, were the following: HjiKyriacos HjiYannou of Zoopighi, who was the owner of plot 342; Despina Yiorki, who was
25 the owner of plot 286; arghaki, arghaki again; Yiorkis Koussoulos, most probably the owner of plots 411 and 412; Church of the village, plot 410; and Toutou Kiole, plot 409. This registration was given at the General Survey plot 413, Sheet/Plan 54/9 and was covering what are to-day plots 413/1/1,
30 413/1/2, 413/2.

In 1945 Efrosini Charalambous sought to transfer her property covered by registration No. 1754 to the respondent by a declaration of gift under No. 1691/45, but the title-deed issued covered only plots 413/1 and 413/1/2, whereas the disputed portion
35 plot 413/2 which, as we have seen, was contained in the title of the mother was not registered or included in the title-deed issued in the name of the respondent by virtue of the aforesaid declaration, though nothing was stated in this declaration to exclude same from this declaration by which she purported
40 to transfer the whole of her property as it was contained therein.

The original registration for plot 342 under No. 3824 was effected on the 16th August, 1944, in the name of a certain Charalambos Kallinikou, of Yermasoya, by virtue of Application No. 395/44 of that date. The disputed plot 413/2 was, however, also inserted in that registration though covered at the time by registration No. 1754 in the name of Efrosini Charalambous, whose consent for taking the disputed portion from her title-deed and including it in the title-deed issued to Charalambos Kallinikou was never given or sought. This was done, according to Anastasios Fourlas, a D.L.O. clerk, at the Department of Lands & Surveys, Limassol, apparently by error as in the file of Application 395/44, the clerk handling the matter at the time failed to insert in the form, registration 1754 as previous registration covering plot 413/2 and also failed to obtain the written consent of such registered owner before he took away part of his property. Furthermore, when Charalambos Kallinikou submitted to the D.L.O. an application asking for registration in his name of certain properties, he did not include therein a claim for plot 413/2, the disputed portion. He was merely asking for registration of plot 342 of Sheet/Plan 54/9.

Later on this registration was transferred by way of sale for ten pounds to a certain Kyriacos Charalambous Peratikos under title-deed No. 3824 dated 11th May, 1971. The appellant then became registered owner of plot 342 which included the disputed portion plot 413/2, registration No. 4787 dated 23rd September, 1971, issued in his name by virtue of sale for C£800.

The parcelling, therefore, in this arbitrary way of the disputed portion from the property of the mother of the respondent, as rightly found by the learned trial Judge, "was done without the knowledge or consent of the true owner, who laboured under the belief that nothing had happened to upset her from the ownership of the land. The same belief was maintained by the successor in title, the plaintiff". The matter, however, came to the surface when the appellant started digging a bore-hole in the disputed portion which made the respondent file the present proceedings in order to assert her ownership over it claiming, *inter alia*, a declaration that she is the owner of the disputed portion and an order for the rectification of the D.L.O. records and a consequential registration of same in her name.

At the trial evidence was adduced by the respondent in order

to establish that the disputed portion was always in her possession and that of her predecessor in title, and that acts of ownership were exercised by them or on their behalf over it. The learned trial judge found on this issue that there was hardly
5 any credible evidence to contradict that adduced by the respondent and came to the conclusion that this property was always cultivated by them as part of their registration. We see no reason to disagree with this finding which was duly warranted by the evidence before him.

10 This evidence was, of course, clearly relevant to show the extent of the respective registrations of the parties and their predecessors in title and on the totality of this evidence, coupled with the evidence from the D.L.O. clerk, the conclusion could safely be drawn that the disputed portion formed part of the
15 original registration in the name of the predecessor in title of the respondent and that it never formed part of the original registration of plot 342. Moreover, on the evidence as it stands, there is no question that the formalities required by the law in force at the time, namely, The Land Transfer Amendment
20 Law, Cap. 228, for the effective transfer of this property by the mother to the respondent were duly complied with with regard to the whole of the property covered by such registration which included unquestionably the disputed portion, plot 413/2. Furthermore, the non-inclusion of the disputed portion
25 in the title-deed issued to the respondent was nothing but a mistake or an act of oversight by the appropriate Lands Officer who dealt with the matter at the time..

For all intents and purposes this declaration of transfer was, according to the law, duly executed and the respondent
30 has been the person entitled to be registered as owner of the disputed portion by virtue of such declaration and in that capacity she has a locus standi to institute these proceedings. The argument of learned counsel of the appellant to the effect that the learned trial Judge erred in disregarding or that he failed
35 to consider, the submission that the respondent had no locus standi as she could not base her claim on a title, nor could she allege prescriptive or other rights of property over the disputed portion of land, cannot stand.

The authorities relied upon in support of this proposition
40 and in particular that of *Rodothea Papageorghiou v. Komodromou* (1963) 2 C.L.R. 221, are distinguishable as in that case

and the cases referred to therein, there was a claim of ownership by virtue of alleged prescriptive rights which were either not established by the evidence or not perfected by registration and which could not be successfully invoked by a successor in title to whom there was an oral or informal transfer of same and consequently a void one. "Entitled to be registered" is a term not confined only to cases of a claim by virtue of a prescriptive right but it includes, in our view, the case where all the formalities for an effective transfer under the law have been complied with and there only remains the recording of the registration by the appropriate Lands Clerk to complete it. 5 10

The respondent could in law, in view of the above, proceed, as she did, for the purpose of rectification of an error or omission in the Land Register in spite of the provisions of section 61 of The Immovable Property (Tenure, Registration and Valuation) Law, Cap. 224, as by its very nature this was not a straightforward case of an error or omission appearing in the Land Register or in any book in the Lands Register Office or in a certificate of registration, as provided in the aforesaid section, but a more complicated matter where in order to trace the alleged error, an investigation had to be carried out by the Director concerning legal rights in land necessitating the calling of evidence and also determination of the question whether the appellant was a bona fide purchaser for value or not and whether he had in the circumstances made reasonable inquiries in order to find out whether the vendor in addition to being the holder of title-deed was also the undisputed owner in possession of the land to be sold. See *Akil Hussein Arnaout v. Emine Hussein Zinouri*, 19 C.L.R. 249, at p. 255. 15 20 25

This approach is born out clearly by the case of *Abraham Hassidoff v. Santi & Others* (1970) 1 C.L.R. 220, at p. 236, where it was stated the following: 30

"This being a case concerning legal rights in land it is obviously a case in which the parties affected should be given full opportunity of vindicating their legal rights in a Court of law in an action for a declaratory judgment as to title or otherwise, with all the safeguards as to proof and admissibility of legal evidence". 35

We felt that we should explain this position though no

objection was taken to the institution of these proceedings instead of pursuing a remedy under section 61 of the Law.

5 The title of Efrosini was issued before the General Survey and consequently it could not at the time be related to it, but there is no doubt that since the General Survey the property covered by her registration, including the disputed portion, could be related to the Survey plan by reference to its boundaries, such as in particular that of the village Church and of Toutou, which are plots under number 409 and 410, respectively.

10 The next ground of law is that the finding of the learned trial Judge that the appellant was not a bona fide purchaser for value "is erroneous and/or unreasonable and/or arbitrary having regard to the evidence and/or is against the weight of evidence and/or is based on a misapprehension of the facts and
15 of the law".

Before we deal with the findings of the learned trial Judge and his approach generally, we find it useful to quote what was stated by Hallinan C.J. in the case of *Zinouri* (*supra*) at p. 255:

20 "This also indicates in my view that a registered sale does not confer on the purchaser an indefeasible right of ownership. Land Registries before issuing title deeds to the heirs of a registered deceased land owner insist to be supplied with a village certificate from the village authorities where the land is situate testifying that the lands inherited were
25 under the undisputed possession of the registered deceased owner up to the time of his death. There is no reason why a prospective purchaser should not be considered bound to make reasonable enquiries in order to find out whether his vendor in addition to being the holder of title deed is also the undisputed owner in possession of the
30 land to be sold. At any rate mere negligence or inaction was never considered sufficient to deprive of his rights a person who acquired statutory title against a registered owner by long undisturbed possession over a particular
35 land.

It seems to me that the general rule that a vendor cannot convey a better title to the purchaser than that of his own has been vigorously applied in land transfers under the Ottoman Land Laws. I do not think that under the English
40 Law a different rule is obtaining".

The trial Judge dealt with the matter as follows:

“Had the defendant at the time of purchase made any form of enquiries, he would have surely found out that the property, plot 413/2, was not in the possession of his predecessor in title. In answers to questions put to him in cross-examination the defendant said the following verbatim: 5

‘I was not interested as to who was getting the crop of the field or of the carob trees. I did not ask anybody except Chambis as to the boundaries of the field as I was satisfied from the D.L.O. sketch that the boundaries were correct. I never went to the field with Mr. Peratikos or anybody else before registration. I relied only on what Mr. Chambis told me as to the boundaries of the field but mainly on the D.L.O. sketch and the D.L.O. title’. 10 15

The enquiries of a purchaser must include an enquiry as to whether the vendor has a physical possession of the property. The defendant failed to do so and his claim to be a bona fide purchaser for value fails and it is hereby dismissed”. 20

The onus is on a defendant to satisfy the Court that he took reasonable steps to ascertain the rights and interest of his vendor in the property which he purported to purchase.

In our view, had he in the present case made reasonable inquiries it would have come to his knowledge that the disputed piece of land was all along in the possession of the respondent and her mother and that upon further inquiry he would have ascertained that the respondent was entitled, as above explained, to be registered thereof. He would have also ascertained the error in the registration of his vendor. He cannot, therefore, protect himself behind the principle that he had no notice of the situation. His attempt to show by the evidence of Papandreas Marcou that the disputed property was cultivated by this witness on his behalf between the years 1966 to 1970 failed as this evidence was rejected by the trial Judge on good grounds. 25 30 35

For all the above reasons this appeal is dismissed with costs.
Appeal dismissed with costs.